



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/173750

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 19, 2016, under Wis. Admin. Code § DHS 10.55, to review a decision by the MY Choice Family Care in regard to Medical Assistance (MA), a hearing was held on May 17, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly terminated the petitioner's non-medical transportation, and self-directed support for homemaking and personal cares.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

I

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]  
MY Choice Family Care  
901 N 9th St  
Milwaukee, WI 53233

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On April 5, 2016 the Family Care Program (FCP) sent the petitioner a notice stating that they were terminating her non-medical transportation, and self-directed support for homemaking and

personal cares. The notice stated that the petitioner was able to complete these tasks with minimal assistance from her natural supports.

3. On April 19, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.
4. The petitioner is 60 years old with diagnoses of non-insulin dependent diabetes type 2, high blood pressure, allergies / asthma, degenerative lumbar/lumbosacral disc disease, low back pain, and sciatica.
5. The petitioner has been receiving services through the Family Care Program (FCP) at the nursing home level of care. The most recent long-term-care-functional screen (LTCFS) determined that the petitioner no longer qualified for the FCP at the nursing home level care. She was still eligible for services at the non-nursing home level of care. The petitioner appealed. I upheld the FCP's determination, and found that the petitioner is only eligible for the FCP at the non-nursing home level of care under case number FCP-173749.
6. Because the petitioner is no longer eligible for the FCP at the nursing home level of care, she is no longer eligible for non-medical transportation, and self-directed support for homemaking and personal cares. The petitioner is also able to complete those tasks with minimal assistance from her natural supports.

### **DISCUSSION**

This appeal is moot. Pursuant to FCP-173749 the petitioner no longer qualifies for the Family Care Program (FCP) at the nursing home level of care. She remains eligible at the non-nursing home level of care. In this case the services that have reduced or terminated are non-medical transportation and self-directed support for homemaking and personal cares. These services are only covered at the nursing home level of care. I have still included a through discussion of these issues below.

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

The MCO must develop an Individual Service Plan (ISP) in partnership with the client. Wis. Admin. Code, §DHS 10.44(2)(f). The ISP must reasonably and effectively address all of the client's long-term needs and outcomes to assist the client to be as self-reliant and autonomous as possible, but nevertheless must be cost effective. While the client has input, the MCO does not have to provide all services the client desires if there are less expensive alternatives to achieve the same results. Wis. Admin. Code, §DHS 10.44(1)(f); DHS booklet, Being a Full Partner in Family Care, page 9. ISPs must be reviewed periodically. Admin. Code, §DHS 10.44(j)(5).

Wis. Stat., §46.287(2)(a)1 provides that a person may request a fair hearing to contest the denial of eligibility for the program and the reduction of services under the FCP program, among other things, directly to the Division of Hearings and Appeals. In addition, the participant can file a grievance with the MCO over any decision, omission, or action of the MCO. The grievance committee shall review and attempt to resolve the dispute. If the dispute is not resolved to the participant's satisfaction, she may then request a hearing with the Division of Hearings and Appeals. Wis. Admin. Code, §DHS 10.55(2).

The starting point for whether a service should be maintained is the general criteria for determining authorization for services – medical appropriateness and necessity, cost effectiveness, statutory and rule limitations, and effectiveness of the service. See Wis. Admin. Code, §DHS 107.02(3)(e).

The services at issue in this case are non-medical transportation and self-directed support for homemaking and personal cares. Non-medical transportation was originally authorized for rides to the [REDACTED] and literacy counsel. Although these locations fit under the non-medical transportation category, one can make the argument that rides to the [REDACTED] and literacy counsel are medically necessary. The petitioner is diagnosed with non-insulin dependent diabetes type 2 and high blood pressure. Time spent at the gym could improve her medical health. She also states that she is illiterate. Given that she manages her own medication, being literate could make her more proficient with this task.

The problem is that since the petitioner obtained authorization for non-medical rides to the [REDACTED] and literacy counsel, she has been using these non-medical rides to attend church service, bible study, and other appointments. These types of appointments, although beneficial to the petitioner, are not medically appropriate, and should not be covered by the FCP.

The FCP did not provide a detailed explanation of their denial of the petitioner's homemaking and personal cares. The only explanation is that the petitioner is "now about to complete these tasks with minimal assistance from [her] natural supports." The petitioner argues that she still needs assistance in this area. This is a moot point because the petitioner is no longer eligible for these services at the non-nursing home level of care. If the petitioner would become eligible again at the nursing home level of care, the FCP would again assess her needs in this area.

### **CONCLUSIONS OF LAW**

The agency correctly terminated the petitioner's non-medical transportation, and self-directed support for homemaking and personal cares.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 10th day of June, 2016

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\sCorinne Balter  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on June 10, 2016.

MY Choice Family Care  
Office of Family Care Expansion  
Health Care Access and Accountability